IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4244 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANIBEN DEVABHAI VAGHRI DAUGHTER OF D.V. VAGHRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4244 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

Mr. H.C.Patel, AGP for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/12/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. H.C.

Patel, AGP for the respondent authorities. By order dated 19.4.2002, notice for final disposal was issued by this Court. Therefore, in the facts and circumstances of the case, this petition is taken up for final hearing today itself with the consent of the learned advocates for the parties.

Heard learned advocate Mr. H.C. Raval for the petitioner and Mr. H.C. Patel, learned AGP for the respondents. In this petition, the petitioner has challenged the decision of the District Valuation Committee, Patan ("Committee" for short) dated 2nd May, 2000 which is at Annexure-C in respect of City Survey No. 255 registered at Mouje Patan bearing Sheet No. 143 ad-measuring 221.27 square meters and the order dated 2nd April, 2002 passed by the Government of Gujarat Annexure-H wherein the request of the petitioner for reconsideration has been rejected by the Government.

It was submitted by the learned advocate Mr. H.C. Raval that in view of the order passed by this Court in Special Civil Application No. 7000 of 1991 and Special Civil Application NO. 5371 of 1992, the land in question has been regularized by the Collector, Mehsana by order dated 7th February, 1997. He also submitted that thus, the encroachment of the petitioner over the land in question has been regularized by the said authority after taking into consideration the location and situation of the land in question and at that time also, the District Valuation Committee, Patan has fixed the price of the land in question at Rs.425.00 per sq. mtr. and, thereafter, the land has remained with the petitioner for residential purpose. According to him, now the petitioner wants to change the user of the land in question from residential to that of non residential user. For that, the District Valuation Committee has fixed the price by order dated 2nd May, 2000 at Rs.5000.00 per sq. mtr. It was submitted by him that against the said decision of the District Valuation Committee, representation made by the petitioner was rejected by the State Government on 2nd April, 2002. He submitted that the land in question has been regularized by the Collector on 7th February, 1997 and within one year, when the petitioner wants to change the user of the land in question from residential to that of non residential, this much enhancement in the price fixed by the District Valuation Committee is arbitrary and, therefore, some suitable directions are required to be issued for considering some reasonable enhancement by the authority in view of the fact that when the land in question was regularized after considering the location

and situation of the land in question at Rs.425.00 per sq. mtr., then, within one year, this much enhancement of the price is unreasonable and, therefore, illegal. He submitted that according to the document at annexure-K page 51, Jantri, wherein the land survey no. 253 to 320 were for non residential and the price of Rs.800.00 has been mentioned by the Deputy COllector. According to him, this is the Government document wherein the market price has been determined by the concerned authority. He also submitted that the adjoining land of Sheet No. 247, 248, 249 and revenue survey no. 71/1 and 72 has been sold at Rs.18000.00 as per the copy of Index No.2 of the office of the Sub Registrar of Patan which is at page 48, Annexure-J to the petition. He also submitted that in respect of the land in question, in valuation report, item no.13 is relating to the land in question where the reasons have been given for enhancement which are contrary to the facts on record. He also submitted that in respect of the similarly situated lands in the nearby to the land of the petitioner, price has been fixed at Rs.1000.00 and some reduction has been given while fixing the price. In short, it is his submission that in view of these facts, the price in respect of the land in question fixed at Rs.5000.00 by the District Valuation Committee is arbitrary and contrary to the record and, therefore, the authority is required to be directed to reconsider the matter after giving reasonable opportunity to the petitioner and to pass appropriate orders in accordance with law.

Learned Asstt. G.P. Mr. H.C. Patel appearing for the respondents has submitted that detailed affidavit in reply has been filed by the Resident Deputy Collector, Patan wherein details have been given as to how the price of the land in question has been determined and fixed by the District Valuation Committee. He submitted that looking to the situation and location of the land in question, the District Valuation Committee was right in fixing the price of the land in question at Rs.5000.00 per sq. mtr. because the petitioner wants to change the user of the land in question from residential to that of non residential. He also pointed out from the map that the land is adjoining to the commercial centre and, therefore, the price has rightly been fixed by the District Valuation Committee. Thus, according to the submissions made by the learned AGP Mr. Patel, there is no substance in this petition and the same is, therefore, liable to be dismissed with costs.

I have considered the submissions made by the learned advocates for the parties. Considering the fact

that the land in question has been regularized by order dated 7th February, 1997 in view of the order passed by this court and at that time, while regularizing the land in question, the District Valuation Committee, Patan has considered the price of the land in question looking to the situation and location and at that time, after considering the location and situation of the land in question, it was fixed at Rs.425.00 per sq. mtr. According to page 47, Annexure-J, details of the land in question have been given as to how the price has been fixed by the authority wherein date of sale deed 12th May, 1998 has been taken into account. Meaning thereby, after regularization of the land in question, within one year, price has been fixed by the District Valuation Committee at Rs.5,000.00 per sq. mtr. from Rs.425.00. No doubt, user is sought to be changed by the petitioner from residential to that of commercial, non residential. However, this much enhancement, prima facie, looking to the facts on record, is unreasonable and arbitrary. Therefore, according to my opinion, same is required to be reconsidered in view of the documents on record placed by the petitioner. IN view of these facts, the decision taken by the District Valuation Committee dated 2nd May, 2000 as well as the decision dated 2nd April, 2002 taken on the representation made by the petitioner against such fixation of price, are required to be quashed and set aside by directing the authority concerned to reconsider the matter.

In the result, this petition is allowed. The decision of the District Valuation Committee dated 2nd May, 2000 fixing the price of the land in question for change of user from residential to commercial as well as the decision dated 2nd April, 2002 on the representation of the petitioner against the fixation of the price of the land in question, both are quashed and set aside. It is directed to the District Valuation Committee, Patan to reconsider the matter for fixing the price of the land in question for change of user from residential to commercial after considering the record and keeping in mind the order of regularization the order of regularization of the land in question dated 7th February, 1997 as well as the Jantri prepared by the Deputy Collector, Patan and other relevant documents that may be produced by the petitioner before the said Committee. The said Committee shall have to consider this record and shall have to pass appropriate order in accordance with law for fixing the price of the land in question after giving reasonable opportunity of hearing to the petitioner within three months from the date of receipt of copy of this order. Rule is made absolute in

terms indicated hereinabove with no order as to costs.

Dt.21.12.2002. (H.K. Rathod,J.)

Vyas